

**STATE WATER RESOURCES CONTROL BOARD**

PAUL R. BONDERSON BUILDING

901 P STREET, SACRAMENTO

Mail Address:

P. O. BOX 100

SACRAMENTO, CALIFORNIA 95812-0100

Phone: (916) 657-1873

Fax: (916) 657-1485



---

**NOTICE OF PUBLIC WORKSHOP****Development of a Water Right Decision to  
Implement Requirements for the San Francisco Bay/  
Sacramento-San Joaquin Delta Estuary**

August 29 &amp; 30, 1995--9:00 AM

September 18 &amp; 19, 1995--9:00 AM

(and additional days as may be necessary)

1416 9th Street, First Floor Auditorium (August 29 &amp; 30, September 18)

901 P Street, First Floor Hearing Room (September 19)

Sacramento, California

---

**SUBJECT OF WORKSHOP**

The State Water Resources Control Board (SWRCB) is convening this workshop to seek comments and recommendations on the proposed project, defined as development of a water right decision that (1) identifies the responsibility of water right holders in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay/Delta Estuary) watershed to achieve the flow, operational, and water quality requirements in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay/Delta Plan) and allocates responsibility according to established principles of water law; (2) may authorize the combined use of the Central Valley Project (CVP) and the State Water Project (SWP) points of diversion in the Delta; (3) requires actions to improve habitat conditions in the Central Valley; and (4) requires measures to improve water supply reliability for users of water within and from the Bay/Delta Estuary watershed. The workshop will also commence the scoping process under the California Environmental Quality Act (CEQA).

**BACKGROUND**

The Bay/Delta Estuary includes the Sacramento-San Joaquin Delta, Suisun Marsh and the embayments upstream of the Golden Gate. The Delta and Suisun Marsh are located where California's two major river systems, the Sacramento and San Joaquin rivers, converge to flow westward to meet incoming seawater tides flowing through the San Francisco Bay.

The watershed of the Bay/Delta Estuary is a critical source of water supply for much of the State, including the needs of a growing population, expanding economy and the aquatic environment. The watershed is a source of drinking water for two-thirds of the State's population; it supplies productive agricultural areas; it is the source of water for the largest anadromous fishery in California; and it is the only source of water to the largest estuarine system on the west coast of the United States.

Two major water distribution systems release stored water into and divert water from the Delta: the SWP operated by the California Department of Water Resources (DWR) and the CVP operated by the U.S. Bureau of Reclamation (USBR). Numerous other

water storage and diversion projects influence the inflows into and outflows from the Bay/Delta Estuary.

Bay/Delta Estuary requirements have been the subject of numerous actions and orders by the SWRCB in the past. Existing SWRCB requirements, imposed on the SWP and CVP, are implemented through Water Right Decision 1485 (D-1485), adopted in 1978, and Water Right Order 95-6, adopted in 1995. The SWRCB opened public proceedings in April 1994 to review the requirements for the Bay/Delta Estuary. Those proceedings resulted in the adoption of the Bay/Delta Plan on May 22, 1995.

The SWP and the CVP are currently operating to meet many of the requirements in the Bay/Delta Plan. On December 15, 1994, representatives of the State and federal governments and some urban, agricultural, and environmental interests signed the Principles for Agreement on Bay/Delta Standards between the State of California and the Federal Government (Principles Agreement).

Among other things the Principles Agreement calls for improvements in Central Valley habitat conditions and for increased water supply certainty. Subsequent to the agreement, the DWR and the USBR committed to operate the SWP and the CVP in accordance with the agreement as part of their reconsultation process under the federal Endangered Species Act for winter-run chinook salmon and Delta smelt. New biological opinions have been issued for these species, and they make a finding of no jeopardy based on proposed operation of the SWP and the CVP consistent with the Principles Agreement. The SWRCB considered the Principles Agreement along with other evidence in the course of developing the Bay/Delta Plan, and the Bay/Delta Plan contains many of the requirements set forth in the Principles Agreement.

On June 8, 1995, the SWRCB adopted Water Right Order 95-6 which temporarily conforms some of the water right permit terms and conditions for the SWP and the CVP to the requirements in the 1995 Bay-Delta Plan and allows the DWR and the USBR to temporarily use each other's water diversion facilities in the Delta under certain restricted circumstances. Other than the SWP, the CVP, and water right holders with standard water right term 91, no other water users

have been required to take any action for the purpose of implementing existing requirements.

In 1985, the CVP petitioned the SWRCB to permanently add the SWP's Delta diversion facilities as a point of diversion and redirection in the water right permits of the CVP and to remove the 4,600 cubic feet per second (cfs) rate of Delta diversion restriction in its water right permits. The SWRCB deferred consideration of this petition until new Delta requirements were established.

## **REGULATORY BASIS FOR ACTION**

The SWRCB has continuing authority under Water Code Sections 100 and 275 to enforce the requirements of the California Constitution, Article X, Section 2 with respect to all water right holders, including pre- and post-1914 appropriative rights and riparian rights. Article X, Section 2 directs that the beneficial use of water be maximized, that water be conserved, and that water be diverted and used under the rule of reasonableness.

The SWRCB has continuing authority over all water rights under the common law public trust doctrine to protect public trust uses. See National Audubon Society v. Superior Court of Alpine County (1983) 33 Cal.3d 419, 189 Cal.Rptr. 346.

Water Code Section 1394 authorizes the SWRCB to include a reservation of jurisdiction in a permit when issues relating to protection of vested rights, protection of the public interest, and coordination with other projects cannot be resolved when the application is approved. Reservations of jurisdiction are included in most of the SWP and the CVP permits. Since 1965, the SWRCB has reserved jurisdiction over water right permits within the Bay/Delta Estuary watershed through use of Standard Water Right Permit Term 80.

The SWRCB can approve changes in points of diversion under Water Code sections 1700-1707.

## **PROCESS FOR SWRCB ACTION**

The SWRCB plans to commence its water right proceedings to implement the Bay/Delta Plan and to establish terms and conditions in appropriate water right permits by holding these scoping workshops.

The SWRCB is seeking input from all interested parties in this scoping phase on how to organize the water right process and to carry out its CEQA responsibilities. The SWRCB anticipates that preparation of an Environmental Impact Report (EIR) will be required.

The emphasis in the first two days of the workshop will be on progress being made by some of the parties who developed the Principles Agreement and other water users to achieve negotiated settlements and on issues in the San Joaquin Basin (Key Issues 1 through 6). Subsequent discussion will center on general issues and on issues in the Sacramento Basin.

## **KEY ISSUES**

### **1. What is the status of efforts to achieve negotiated solutions to the water right issues associated with implementation of the Bay-Delta Plan?**

The SWRCB requests a status report from the parties on the progress of the negotiations.

### **2. In the absence of a negotiated settlement, binding on all necessary parties and acceptable to the SWRCB, what process should be used to identify the responsibility of diverters from the San Joaquin watershed to meet water quality and flow requirements at Vernalis?**

The water right decision will allocate responsibility to meet these requirements. Issues that must be addressed in this allocation are water right priorities, the area of origin statutes, and responsibility to mitigate the effects on public trust uses of individual diversions. The SWRCB solicits recommendations regarding methods to determine responsibility of individual diverters.

Currently the only water user with responsibility to meet requirements at Vernalis is the USBR. Should other water users also be required to release or bypass flows to meet requirements at Vernalis? Alternative methods of allocation that may be considered include but are not limited to: (1) the USBR continues to carry the sole responsibility to meet requirements at Vernalis; (2) all water users share responsibility based on a method to be developed; (3) the SWRCB

evaluates existing instream flow requirements below the last major reservoirs on the tributaries to the San Joaquin River and requires augmentation of those flows if appropriate, with additional flow needs at Vernalis being met by the USBR or through the purchase of water from willing sellers; and (4) water users bypass flows when there is insufficient water available to them under their water right priorities, including area of origin considerations, as determined by a method similar to Water Right Permit Term 93. Term 93 states as follows: "No diversion is authorized by this permit when conserved water released from New Melones Reservoir is being used to maintain the water quality in the San Joaquin River at Vernalis at a level of 500 parts per million (ppm) total dissolved solids (TDS) or during any time of low flows when TDS levels at Vernalis exceed 500 ppm. This restriction shall not apply when, in the judgment of the SWRCB, curtailment of diversion under this permit will not be effective in lowering the TDS at Vernalis, or when, in the absence of the permittee's diversion, hydraulic continuity would not exist between the permittee's point of diversion and Vernalis. The SWRCB shall notify permittee at any time curtailment of diversion is required under this term."

### **3. What specific San Joaquin River water quality or flow requirements should be used when determining upstream water users responsibilities to meet conditions at Vernalis?**

The Bay/Delta Plan has both salinity and flow requirements at Vernalis. What portion of these requirements should water users, in addition to the USBR, be required to meet as conditions of their water rights? For example, should USBR be responsible for the salinity requirements but other water users help meet the flow requirements?

The Bay/Delta Plan contains flow requirements for the San Joaquin River at Vernalis from February through June and in October for protection of fish and wildlife. Should the SWRCB require augmentation of these flows with a flow requirement based on the riparian and appropriate consumptive water needs in the southern Delta?

The plan identifies the fish and wildlife flow requirements as interim requirements that will be

reevaluated within the next three years. What studies must be done to reevaluate those flows and what is the time frame for their completion? What studies need to be done to evaluate the baseline condition of fish and wildlife resources? The SWRCB solicits recommendations regarding the information that needs to be collected to complete this reevaluation. Recommendations regarding alternative flow requirements and their bases are also solicited.

**4. What actions should be taken to achieve the salinity requirements in the southern Delta?**

Elevated salinity in the southern Delta is caused by discharges of land-derived salts from agricultural drainage, salts imported into the basin by water projects, and low river flow. The short-term implementation program for these requirements could consist of several actions, including one or more of the following: a combination of controlled releases of saline discharges to the San Joaquin River (source management); source reduction measures; provision for release of adequate flows to the river, including recirculation of fresh water pumped from the Delta and released into the San Joaquin River; and construction of barriers. For the long-term, construction of a facility to remove salts from the San Joaquin Basin should be evaluated. Information and recommendations regarding the details for an appropriate implementation program for southern Delta agricultural requirements is requested.

**5. What actions should be taken to achieve the dissolved oxygen objective?**

The Bay/Delta Plan contains a dissolved oxygen water quality objective of six milligrams per liter for the San Joaquin River between Turner Cut and Stockton from September through November. The plan identifies the following feasible measures to implement the objective: (1) regulating the effluent discharged from the Stockton Wastewater Treatment Plant and other upstream discharges that contribute to the biochemical oxygen demand; (2) providing higher flows in the San Joaquin River; and (3) installation of a barrier at the head of Old River to increase flows in the San Joaquin River. The SWRCB solicits recommendations regarding specific requirements that should be incorporated into

the water right decision to implement the dissolved oxygen objective.

**6. Should the SWRCB require construction and operation of barriers in the southern Delta?**

The Bay/Delta Plan recommends evaluation of the effectiveness of barriers as a means of improving fish survival in the Delta. The Principles Agreement calls for construction of a barrier at the head of Old River during the April-May pulse flow on the San Joaquin River. The DWR has installed temporary barriers in the southern Delta in the recent past. The DWR is evaluating, through the CEQA process, construction of four permanent barriers in the southern Delta to improve migratory fish survival and water quality and to raise water levels in southern Delta channels. The SWRCB could require construction and operation of permanent barriers, upon completion of environmental documentation that supports such a requirement. The SWRCB solicits recommendations regarding whether requirements to construct and operate barriers in the southern Delta should be incorporated into the water right decision.

**7. Are any additional actions necessary in the Bay/Delta watershed to implement the narrative salmon requirement to double natural production of chinook salmon from the average production of 1967-1991?**

The Bay/Delta Plan states that implementation of the numeric requirements may achieve the narrative requirement for salmon protection, but other measures may be necessary. The narrative requirement is consistent with the anadromous fish doubling goals of the CVPIA and State policy. The SWRCB solicits information and recommendations regarding additional measures needed to achieve this requirement.

**8. Which water rights in the Bay-Delta watershed should be subject to this water right decision?**

In order to facilitate implementation, the SWRCB is considering limiting this proceeding to parties with direct diversion rights greater than three cfs or storage rights greater than 200 acre-feet. The SWRCB solicits comments on whether all water rights in the Central Valley should be considered in this proceeding and, if

not, what criteria should be established for excluding water rights.

**9. What are potentially significant environmental and economic effects of alternative allocation methodologies in the Bay/Delta watershed?**

The SWRCB will analyze the significant environmental effects, including growth inducing effects and economic effects of alternative actions. The SWRCB solicits information on the potential significant effects of adoption of a water right decision and the tools and the methodology that should be used to evaluate those effects.

**10. What method should be used to allocate responsibility to meet water quality and flow requirements in the Sacramento River, Delta and Suisun Marsh to upstream water users?**

The SWRCB solicits recommendations regarding methods to determine responsibility of individual diverters. Possible allocation alternatives for Delta outflow include but are not limited to: (1) the SWP and the CVP are solely responsible; (2) all water right holders share responsibility based on a method to be developed; (3) the SWRCB evaluates existing instream flow requirements below the last major reservoir on the mainstem and tributaries of the Sacramento River, and on the Mokelumne and Consumnes rivers; and requires augmentation of those flows, if appropriate, with additional flows needed for Delta outflow being met by USBR and DWR or through the purchase of water from willing sellers; and (4) water users bypass flows when there is insufficient water under their water right priorities, including area of origin considerations, as determined by a method similar to Standard Water Right Permit Term 91. Term 91 states as follows: "No diversion is authorized by this permit when satisfaction of inbasin entitlements requires release of supplemental project water by the CVP or the SWP. Inbasin entitlements are defined as rights to divert water from streams tributary to the Sacramento-San Joaquin Delta or the Delta for use within the respective basins of origin or the legal Delta, unavoidable natural requirements for riparian habitat and conveyance losses, and flows required by the SWRCB for maintenance of water quality and fish and wildlife. Export diversions and project carriage water are

specifically excluded from the definition of inbasin entitlements. Supplemental project water is defined as water imported to the basin by the projects, and water released from project storage which is in excess of export diversions, project carriage water, and project inbasin deliveries."

**11. Should the SWRCB approve combined use of the CVP and the SWP points of diversion in the Delta, and what conditions should be placed on such approval?**

Combined use of the CVP and the SWP points of diversion may provide fishery benefits by shifting diversions in time and location in response to fish density information. Combined use also may increase diversions from the Delta. The SWRCB solicits information on the environmental effects of combined use of the CVP and the SWP points of diversion and recommendations for conditions that should be included as part of such an approval, in order to consider whether such approval is appropriate. Information is needed to determine if combined use can benefit fisheries and diversions concurrently.

**12. What is the no action alternative for this analysis?**

There are several possible no action regulatory alternatives: D-1485 conditions; D-1485 and CVPIA conditions; 1995 Biological Opinions for winter-run chinook salmon and Delta smelt (1995 Biological Opinions) conditions; and the 1995 Biological Opinions and CVPIA conditions. The no action alternative also requires characterization of the level of development and upstream conditions. The SWRCB solicits information and recommendations on the no action alternative, including definition of studies needed to quantify the effects of the no action alternative.

**13. Are there actions the SWRCB should take, including actions discussed in the implementation program for the Bay/Delta Plan, to improve habitat conditions in the Bay/Delta watershed?**

The SWRCB may consider other actions to improve habitat conditions in the Bay/Delta watershed and reduce or mitigate the effect of water use in the basin. Specific recommendations are requested.

14. What monitoring requirements should be established by the SWRCB to evaluate the effectiveness of actions taken as a result of this proceeding?

D-1485 currently contains specific monitoring requirements. How should these requirements be modified in coordination with the actions of other agencies in the watershed?

15. Should the SWRCB establish work groups to aid the SWRCB in evaluating issues associated with plan implementation?

Work groups can be used to identify areas of agreement and narrow differences among the parties. The SWRCB requests recommendations regarding the advisability of forming work groups, appropriate subjects for work group analysis, and suggested work group leadership.

#### WORKSHOP PROCEDURES

The workshop will be informal, but a court reporter will be present to provide an accurate record of the proceedings. There will be no sworn testimony or cross examination of participants, but the SWRCB and its staff may ask clarifying questions.

Participants are requested to provide 20 copies of their submittals either prior to or at the time of the workshop for the use of the SWRCB and its staff. Additional copies for participants of the workshop should also be provided. The submittals will have to be formally introduced as evidence in a subsequent hearing on this matter if the participants want the submittals to be part of the hearing record for adoption of the water right decision.

The participants will be asked to orally summarize their comments and recommendations. Time limits may be imposed on oral presentations by each participant. Participants with similar interests are requested to make joint presentations.

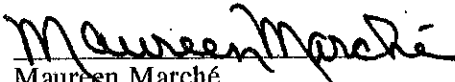
The SWRCB and its staff may consult with and request information from participants and other interested parties between the date of this notice and the commencement of evidentiary proceedings.

#### INFORMATION REGARDING WORKSHOP

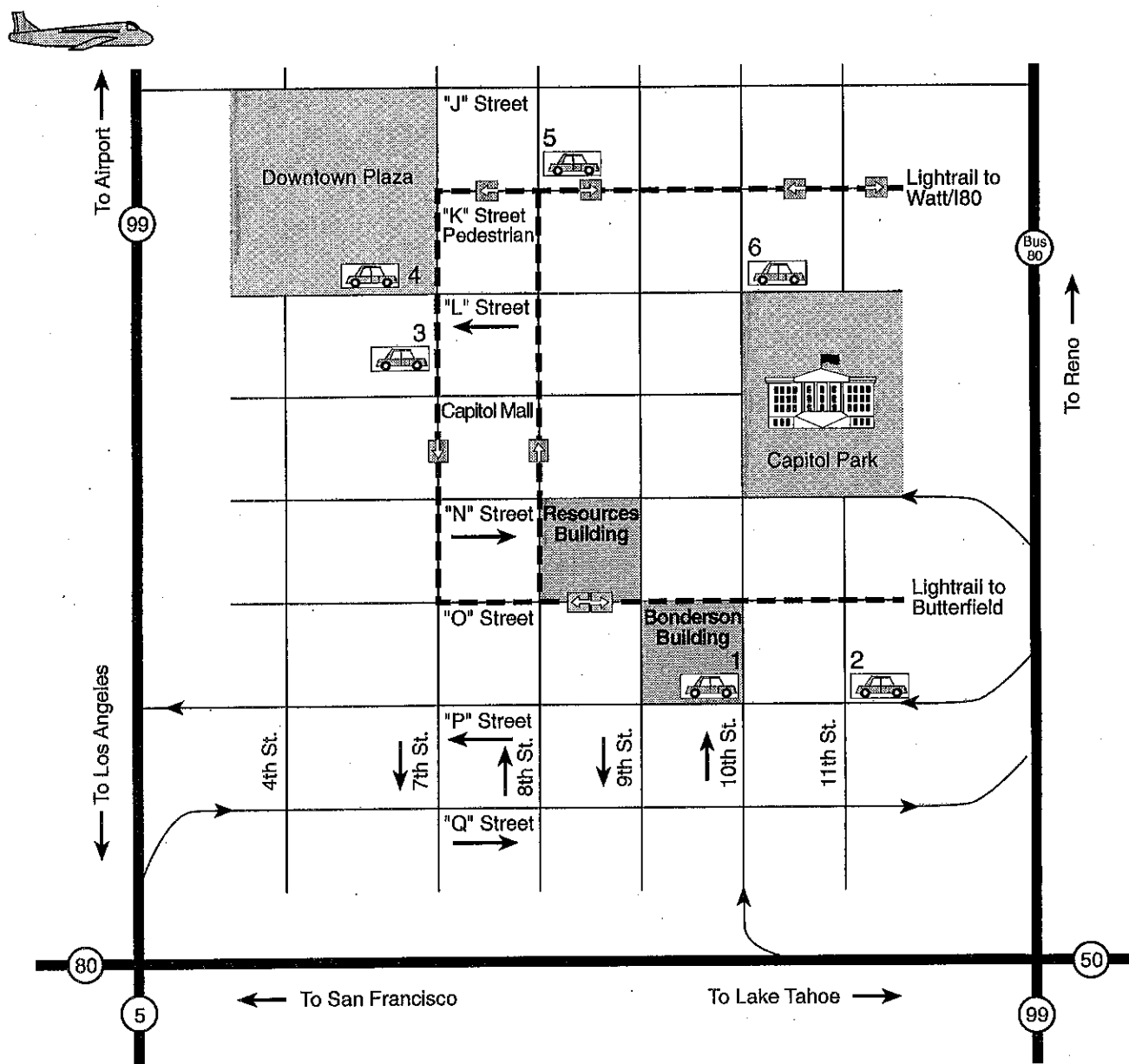
Questions concerning this notice may be directed to Victoria A. Whitney, Chief, Bay/Delta Unit, at (916) 653-2516 or Barbara J. Leidigh, Senior Staff Counsel, at (916) 657-2102.

#### PARKING AND ACCESSIBILITY

The attached map shows the location of the workshop and available parking. This site is accessible to persons with disabilities.


  
Maureen Marché  
Administrative Assistant to the Board

JULY 27 1995



Resources Building Auditorium  
1416 9th Street  
Sacramento

Bonderson Building  
901 P Street  
Sacramento

Parking: 

1. State Garage  
\$0.75 per half hour
2. State Garage  
\$0.75 per half hour
3. \$6.00 per day max
4. \$6.00 per day max
5. \$5.50 per day max
6. \$6.00 per day max

